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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

Date MAY 27 1977  
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INTERSTATE COMMERCE COMMISSION

Mr. Robert Oswald  
SecretaryInterstate Commerce Commission  
Washington, D. C. 20423

May 26, 1977

CC Washington, D.

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I.C.C.  
OPERATION BR.

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CORRELATION NO. ... Filed &amp; Recorded

MAY 27 1977 -4 01 PM

INTERSTATE COMMERCE COMMISSION

Dear Mr. Oswald:

In pursuance of the provisions of Section 20c of the Interstate Commerce Act, as amended, and the Regulations of the Interstate Commerce Commission promulgated thereunder, there are herewith transmitted for filing and recording the following documents:

1. Six (6) instruments constituting executed Conditional Sale Agreements dated as of April 15, 1977, executed in counterpart, among General Motors Corporation (Electro Motive Division), as Builder, New England Merchants Leasing Corporation B-3, as Vendee, and the Toledo, Peoria & Western Railroad Company, as Lessee, covering four (4) G.P. Model 38-2 2000 horsepower diesel electric locomotives;
2. Six (6) executed Agreement and Assignments dated as of April 15, 1977 between General Motors Corporation (Electro Motive Division), as Builder, and the Commercial National Bank of Peoria, as Assignee, relating to the aforesaid Conditional Sale Agreement, and executed in counterpart;
3. Six (6) instruments constituting six executed Leases of Equipment dated as of April 15, 1977, executed in counterpart, between New England Merchants Leasing Corporation B-3, as Lessor, and the Toledo, Peoria & Western Railroad Company, as Lessee, covering the lease of the aforementioned four locomotives;

*C. H. Kumbel*  
*C. H. Kumbel*

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4. Six (6) instruments constituting six executed Assignment of Lease and Agreement executed in counterpart dated as of April 15, 1977 between New England Merchants Leasing Corporation B-3, as Lessor, and the Commercial National Bank of Peoria, relating to the aforesaid Lease of Equipment.

A check in the amount of \$100.00 made payable to the Treasurer of the United States is herewith tendered in payment of the recordation fee with respect to the Conditional Sale Agreement, the Agreement and Assignment, the Lease, and the Assignment of Lease and Agreement.

In respect of the Conditional Sale Agreement, the names and addresses of the respective parties are as follows:

Builder: General Motors Corporation  
(Electro Motive Division)  
LaGrange, Illinois 60525

Vendee: New England Merchants Leasing Corporation B-3  
One Washington Mall  
16th Floor  
Boston, Massachusetts 02107

Lessee: Toledo, Peoria & Western Railroad Company  
2000 East Washington Street  
East Peoria, Illinois 61611

In respect of the Agreement and Assignment, the names and addresses of the parties are:

Builder: General Motors Corporation  
(Electro Motive Division)  
LaGrange, Illinois 60525

Assignee: Commercial National Bank of Peoria  
301 South Adams Street  
Peoria, Illinois 61602

In respect of the Lease, the names and addresses of the parties are:

Lessor: New England Merchants Leasing  
Corporation B-3  
One Washington Mall  
16th Floor  
Boston, Massachusetts 02107

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Lessee: Toledo, Peoria & Western Railroad Company  
2000 East Washington Street  
East Peoria, Illinois 61611

In respect of the Assignment of Lease and Agreement, the names and addresses of the parties are:

Lessor: New England Merchants Leasing  
Corporation B-3  
One Washington Mall  
16th Floor  
Boston, Massachusetts 02107

Vendor: Commercial National Bank of Peoria  
301 South Adams Street  
Peoria, Illinois 61602

A general description of the equipment covered by the above-identified Conditional Sale Agreement and Lease of Equipment is as follows:

Four (4) G.P. Model 38-2 2000 horsepower diesel electric locomotives manufactured by General Motors Corporation (Electro Motive Division), bearing road numbers 2001 to 2004 (both numbers inclusive).

None of the above-identified documents has been previously recorded with the Interstate Commerce Commission.

It would be appreciated if four (4) sets of documents, each constituting file copies of each of the above-identified documents, bearing the Commission's filing and recordation stamps will be delivered to:

Kunkel Transportation Services, Inc., 425 - 13th Street, N.W.,  
1010 Penn Building, Washington, D. C. 20004

Very truly yours,

TOLEDO, PEORIA & WESTERN  
RAILROAD COMPANY

By Carolyn H. Kunkel, President  
Kunkel Transportation Services, Inc.  
Statutory Agent

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W. H. HARRIS COMPANY OF PEORIA

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ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of April 15, 1977

between

NEW ENGLAND MERCHANTS LEASING CORPORATION B-3

Lessor

and

COMMERCIAL NATIONAL BANK OF PEORIA

Vendor

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ASSIGNMENT OF LEASE AND AGREEMENT dated as of April 15, 1977 (hereinafter called the "Agreement") by and between NEW ENGLAND MERCHANTS LEASING CORPORATION B-3 (hereinafter called the "Lessor" or the "Vendee") and COMMERCIAL NATIONAL BANK OF PEORIA (hereinafter called the "Vendor").

W I T N E S S E T H:

WHEREAS, the Vendee and TOLEDO, PEORIA & WESTERN RAILROAD COMPANY (hereinafter called the "Lessee") are entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the "Security Document") with GENERAL MOTORS CORPORATION (ELECTRO MOTIVE DIVISION) (hereinafter called the "Manufacturer") providing for the sale to the Vendee of such units of equipment described in Annex B thereto as are delivered to and accepted by the Vendee thereunder (hereinafter called the "Units"); and

WHEREAS, the Lessor and the Lessee have entered into a Lease of Equipment dated as of the date hereof (hereinafter called the "Lease"), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Document and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness, the

Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 11 hereof, the Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the Lessor's obligations under the Security Document, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Lessor is or may become entitled under the

Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Document. So long as no event of default (or event which, with notice or lapse of time, or both, could constitute an event of default) under the Security Document shall have occurred and be continuing, the balance of any Payments shall, within two business days after the receipt thereof, be paid to the Lessor.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. To protect the security afforded by this Assignment, the Lessor agrees as follows:

A. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease, and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

B. At the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease.

C. Should the Lessor fail to make any payment or to do any act which this Assignment requires the Lessor to make or do, then the Vendor, but without obligation so to do, after the Lessor has had a period of sixty (60) days to make such payment or do such act, but without releasing the Lessor from any obligation hereunder, may make or do the



same in such manner and to such extent as the Vendor may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Vendor, and also the right to perform and discharge each and every obligation, covenant and agreement of the Lessor contained in the Lease; and in exercising any such powers, the Vendor may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessor will reimburse the Vendor for such costs, expenses and fees.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Vendor may reasonably deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Document, this Assignment

and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. If an event of default under the Security Document shall occur and be continuing, the Vendor may declare all sums secured hereby immediately due and payable and may apply all such sums against the amounts due and payable under the Security Document, subject to any right which the Lessee may have pursuant to the provisions of the Lease.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord and redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interests of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, and the Vendor shall cause this Assignment to be recorded with the Interstate Commerce Commission pursuant to said section of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at:

Commercial National Bank of Peoria  
301 South Adams Street  
Peoria, Illinois  
Attn: John Wiedman, Vice President

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no Event of Default under the Lease or an event of default under the Security Document has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Vendor by this Assignment.

12. Notwithstanding anything contained in this Agreement to the contrary, the Vendor agrees that the Lessor has no liability to the Vendor or any assignee thereof under this Agreement except to the extent of the "income and proceeds from the equipment" as that term is defined in the Security Document.

IN WITNESS WHEREOF, the parties hereto have caused  
this instrument to be executed in their respective corporate names  
by officers thereunto duly authorized, and their respective  
corporate seals to be affixed and duly attested, all as of the  
date first above written.


NEW ENGLAND MERCHANTS LEASING  
CORPORATION B-3

By

  
Vice President

(SEAL)

ATTEST:

  
Trustee Clerk

COMMERCIAL NATIONAL BANK OF PEORIA

By

(SEAL)

ATTEST:

\_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused  
this instrument to be executed in their respective corporate names  
by officers thereunto duly authorized, and their respective  
corporate seals to be affixed and duly attested, all as of the  
date first above written.

NEW ENGLAND MERCHANTS LEASING  
CORPORATION B-3

By \_\_\_\_\_

(SEAL)

ATTEST:

\_\_\_\_\_

COMMERCIAL NATIONAL BANK OF PEORIA

By *John E. Wagoner*  
Vice Pres.

(SEAL)

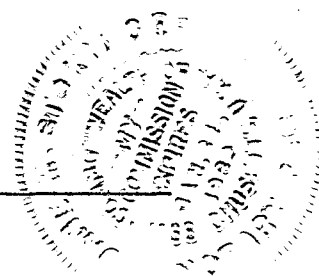
ATTEST: *Theo. B. Ragals*  
Vice Pres.

STATE OF Mass.

COUNTY OF Suffolk

On this 26 day of May, 1977, before me personally appeared Paul D. Dean<sup>3rd</sup>, to me personally known, who, being by me duly sworn, says that he is a Vice President of NEW ENGLAND MERCHANTS LEASING CORPORATION B-3, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed, sealed and attested on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jane M. Stokinger  
Notary Public



My Commission Expires: 1/31/80

STATE OF

COUNTY OF

On this \_\_\_\_\_ day of May, 1977, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of COMMERCIAL NATIONAL BANK OF PEORIA, that one of the seals affixed to the foregoing instrument is the corporate seal of said Bank, that said instrument was signed, sealed and attested on behalf of said Bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Bank.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF

COUNTY OF

On this \_\_\_\_ day of May, 1977, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of NEW ENGLAND MERCHANTS LEASING CORPORATION B-3, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed, sealed and attested on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF

COUNTY OF

On this 26<sup>th</sup> day of May, 1977, before me personally appeared John E. Weidman, to me personally known, who, being by me duly sworn, says that he is a Vice President of COMMERCIAL NATIONAL BANK OF PEORIA, that one of the seals affixed to the foregoing instrument is the corporate seal of said Bank, that said instrument was signed, sealed and attested on behalf of said Bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Bank.

Richard T. Shuman  
Notary Public

My Commission Expires:

October 1, 1979

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of MAY 26, 1977.

TOLEDO, PEORIA & WESTERN  
RAILROAD COMPANY

By

Title:

*W. J. ...*  
*President*